



CITY OF CAMBRIDGE

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RENT CONTROL BOARD

D. MARGARET DRURY, EXECUTIVE DIRECTOR

To: Robert Healy,
City Manager

From: ^{DMD} D. Margaret Drury
Executive Director

Date: January 18, 1989

Re: Council Order #24, 9/19/88

The City Council has requested a report on the number of persons who have lived in a building since 1979 and who have appeared before the Rent Control Board to request permission to occupy the units they presently rent.

Sec. 1 (c 1/2) of Ordinance 966, as amended, provides that the Board shall issue a certificate of exemption to any person who files with it an affidavit stating that he or she is a current tenant of the unit, that he or she occupied it as a tenant before August 10, 1979, and that he or she intends in good faith to occupy it indefinitely as its owner. Sec. 1 (c 1/2) was an amendment to the Ordinance, effective August 1, 1981. Under this section, the Board has issued many exemption certificates. While the Board does not keep separate records of the various categories under which it grants certificates of exemption, the staff estimates that approximately 15-20% of the total exemptions issued, which generally amount to a total of around 310 per year fall under this category. Thus the Board grants approximately 45-60 certificates of exemption per year for cases in which tenants have continuously occupied their units since prior to August 10, 1979.

Recently, in two separate cases, tenants at 2 Arlington Street-1800 Massachusetts Avenue (one building) applied for certificates of exemption under the theory that they have been tenants in the building since prior to August 10, although they have not lived in the particular units for which they were seeking certificates since that time. The Board interpreted Sec. 1 (c 1/2) to limit the exemption by its explicit language to particular units that have been occupied by the applicant since prior to August 10, 1979. Those cases have been appealed to court. Thus ultimately the court will decide whether the Board's legal analysis is correct. As far as I have been able to determine, the Board has never ruled that a tenant who had lived in the same building but not the same unit since prior to August

10, 1979 could be exempt from Sec. 1 (1/2).

The related question is whether such tenants could be eligible for removal permits based on the considerations set forth in Sec. 1 (d) of the Removal Permit Ordinance. In connection with pending litigation, Cambridge Rent Control Board staff recently examined and categorized all cases in which removal permits have been granted, but not cases in which removal permits have been denied. In 1979 and 1980 removal permits were granted in five cases where a pre-1981 tenant sought the permit for another unit which he or she had not occupied since prior to August 10, 1979; and in 1982, one was granted in such a situation. Of the six 1979-1982 cases, three involved tenants who were still living in the unit they had occupied since prior to August 10, 1979, but who wanted to purchase other units. RP 1979-049, 2 Avon Street #8; RP 1979-015, 1716 Cambridge Street #21; RP 1979-016, 1716 Cambridge St. #34. The 1982 case also involved that situation. RP, 19 Garden St. #63. In those cases, the tenants had the right to purchase the units they occupied. 1/ Rather than purchasing the units they were entitled to purchase, they purchased other units, and as a result, the original units were permanently returned to the rental housing market. The Board reasoned that the shortage of available rental housing would not be aggravated in such a situation and granted the permits.

One case involved pre-1979 tenants of one unit who had purchased that unit and sought a removal permit to combine it with the unit above. RP 1979-046, 10 Dana Street Apt. 301S. In that case the Board granted the permit because the negotiations to purchase the unit had been almost completed before August 10, 1979, and a deposit had been paid prior to August 10, 1979. Again, under the Polednak case, these tenants could have moved into the unit, and then purchased and owner-occupied the units without a removal permit.

Two of the 1980 cases involved tenants who had lived in the building since prior to August 10, 1979, but were not at the time of application residing in units that they had occupied since prior to August 10, 1979. RP 1980-101, 1716 Cambridge St. #38; RP 1979-044, 10 Dana Street Apt. 202 S. Both of those cases were decided prior to the enactment of Sec. 1 (1/2). Both involved hybrid buildings. In both cases there was evidence that

1/ Actually, under Polednak v. Rent Control Board of Cambridge, 397 Mass. 854 (1986), prior to August 1, 1981, the effective date of Sec. 1 (C 1/2), the tenants could have moved into the units they sought and then purchased them. After August 1, 1981, Sec. 1 (1/2) limited owner-occupancy to those situations in which the tenant had occupied the unit prior to August 10, 1979.

more than half of the units were owner-occupied condominiums. In one, it appeared that a purchase and sale agreement had been executed prior to August 10, 1979.

Rent Control Board records show that since May, 1980, no removal permits have been granted for purchase of another unit in the building by tenants who were not eligible to purchase the unit in which they lived. In 1987 a landlord sought removal permits to sell two units to tenants of the units, RPZ 87-026, 25 Highland Ave. #2R and #3. The tenants had each lived in their units and buildings for two years; one had lived in Cambridge for 17 years, the other for ten years. The Board denied permits on the basis that although the sale of the units to the current tenants would not cause any apparent hardship to those tenants, the issuance of the removal permits would not benefit the class of people sought to be protected by the Act and Ordinance 966 and would aggravate the shortage of decent, affordable rental housing.



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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

January 23, 1989

To the Honorable, the City Council:

In response to Awaiting Report No. 14 regarding the number of individuals who have appeared before the Rent Control Board to purchase units they have lived in since prior to 1979, I submit the attached report from the Rent Control Board.

Very truly yours,

Robert W. Healy
City Manager

Re: response to Awaiting Report Item 14 on the number of individuals who have appeared before the Rent Control Board to purchase units they have lived in since prior to 1979.

In City Council,

January 23, 1989

1-23-89

Communication Placed on
File. Remains on Awaiting
Report. Further Information
requested as to how many
other people are Affected
on Motion of Councillor
Duchay.